

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SUSAN PASKOWITZ, individually and on behalf of all others similarly situated,

NO. 2:17-cv-00992

Plaintiff,

V.

RIGHTSIDE GROUP, LTD., DAVID E.
PANOS, TARYN NAIDU, DIANE M.
IRVINE, ROBERT J. MAJTELES, JAMES R.
QUANDT, RICHARD C. SPALDING,
DONUTS INC., and DTS SUB INC..

**CLASS ACTION COMPLAINT FOR
VIOLATION OF THE SECURITIES
EXCHANGE ACT OF 1934**

JURY DEMAND

Defendants.

Plaintiff, by her undersigned attorneys, for this complaint against defendants, alleges upon personal knowledge with respect to herself, and upon information and belief based upon, *inter alia*, the investigation of counsel as to all other allegations herein, as follows:

NATURE OF THE ACTION

1. This action stems from a proposed transaction announced on June 14, 2017 (the “Proposed Transaction”), pursuant to which Rightside Group, Ltd. (“Rightside” or the “Company”) will be acquired by Donuts Inc. (“Parent”) and its wholly-owned subsidiary, DTS Sub Inc. (“Merger Sub,” and together with Parent, “Donuts”).

2. On June 13, 2017, Rightside's Board of Directors (the "Board" or "Individual

1 Defendants”) caused the Company to enter into an agreement and plan of merger (the “Merger
2 Agreement”). Pursuant to the terms of the Merger Agreement, Donuts commenced a tender
3 offer, set to expire on July 26, 2017, and stockholders of Rightside will receive \$10.60 per
4 share in cash.

5 3. On June 27, 2017, defendants filed a Solicitation/Recommendation Statement
6 (the “Solicitation Statement”) with the United States Securities and Exchange Commission
7 (“SEC”) in connection with the Proposed Transaction.

8 4. The Solicitation Statement omits material information with respect to the
9 Proposed Transaction, which renders the Solicitation Statement false and misleading.
10 Accordingly, plaintiff alleges herein that defendants violated Sections 14(e), 14(d), and 20(a) of
11 the Securities Exchange Act of 1934 (the “1934 Act”) in connection with the Solicitation
12 Statement.

JURISDICTION AND VENUE

14 5. This Court has jurisdiction over all claims asserted herein pursuant to Section 27
15 of the 1934 Act because the claims asserted herein arise under Sections 14(e), 14(d), and 20(a)
16 of the 1934 Act and Rule 14a-9.

17 6. This Court has jurisdiction over defendants because each defendant is either a
18 corporation that conducts business in and maintains operations within this District, or is an
19 individual with sufficient minimum contacts with this District so as to make the exercise of
20 jurisdiction by this Court permissible under traditional notions of fair play and substantial
21 justice.

22 7. Venue is proper under 28 U.S.C. § 1391 because a substantial portion of the
23 transactions and wrongs complained of herein occurred in this District.

PARTIES

25 8. Plaintiff is, and has been continuously throughout all times relevant hereto, the
owner of Rightside common stock.
26

9. Defendant Rightside is a Delaware corporation and maintains its principal

1 executive offices at 5808 Lake Washington Blvd. NE, Suite 300, Kirkland, Washington 98033.

2 Rightside's common stock is traded on the NasdaqGS under the ticker symbol "NAME."

3 10. Defendant David E. Panos ("Panos") is a director and Chairman of the Board of
4 Rightside.

5 11. Defendant Taryn Naidu ("Naidu") is a director and Chief Executive Officer
6 ("CEO") of Rightside.

7 12. Defendant Diane M. Irvine ("Irvine") is a director of Rightside. According to
8 the Company's website, Irvine is Chair of the Compensation Committee and a member of the
9 Nominating and Governance Committee.

10 13. Defendant Robert J. Majteles ("Majteles") is a director of Rightside. According
11 to the Company's website, Majteles is Chair of the Nominating and Governance Committee, a
12 member of the Audit Committee, and a member of the Compensation Committee.

13 14. Defendant James R. Quandt ("Quandt") is a director of Rightside. According to
14 the Company's website, Quandt is Chair of the Audit Committee and a member of the
15 Compensation Committee.

16 15. Defendant Richard C. Spalding ("Spalding") is a director of Rightside.
17 According to the Company's website, Spalding is a member of the Audit Committee and the
18 Nominating and Governance Committee.

19 16. The defendants identified in paragraphs 10 through 15 are collectively referred
20 to herein as the "Individual Defendants."

21 17. Defendant Parent is a Delaware corporation and a party to the Merger
22 Agreement.

23 18. Defendant Merger Sub is a Delaware corporation, a wholly-owned subsidiary of
24 Parent, and a party to the Merger Agreement.

25 **CLASS ACTION ALLEGATIONS**

26 19. Plaintiff brings this action as a class action on behalf of herself and the other
27 public stockholders of Rightside (the "Class"). Excluded from the Class are defendants herein

1 and any person, firm, trust, corporation, or other entity related to or affiliated with any
2 defendant.

3 20. This action is properly maintainable as a class action.

4 21. The Class is so numerous that joinder of all members is impracticable. As of
5 June 12, 2017, there were approximately 19,287,144 shares of Rightside common stock
6 outstanding, held by hundreds, if not thousands, of individuals and entities scattered throughout
7 the country.

8 22. Questions of law and fact are common to the Class, including, among others: (i)
9 whether defendants violated the 1934 Act; and (ii) whether defendants will irreparably harm
10 plaintiff and the other members of the Class if defendants' conduct complained of herein
11 continues.

12 23. Plaintiff is committed to prosecuting this action and has retained competent
13 counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of
14 the other members of the Class and plaintiff has the same interests as the other members of the
15 Class. Accordingly, plaintiff is an adequate representative of the Class and will fairly and
16 adequately protect the interests of the Class.

17 24. The prosecution of separate actions by individual members of the Class would
18 create the risk of inconsistent or varying adjudications that would establish incompatible
19 standards of conduct for defendants, or adjudications that would, as a practical matter, be
20 dispositive of the interests of individual members of the Class who are not parties to the
21 adjudications or would substantially impair or impede those non-party Class members' ability
22 to protect their interests.

23 25. Defendants have acted, or refused to act, on grounds generally applicable to the
24 Class as a whole, and are causing injury to the entire Class. Therefore, final injunctive relief on
25 behalf of the Class is appropriate.

SUBSTANTIVE ALLEGATIONS

Background of the Company and the Proposed Transaction

26. Rightside is a recognized leader in Internet domain name services.

27. The Company is the industry's only end-to-end vertically integrated provider
4 operating at scale and able to service all aspects of a domain name.

28. Rightside is also a chief participant in a historic expansion of the Internet name
6 space – broadening domain name extensions from just 22 legacy options such as .com and .net
7 to potentially more than 1,300 including approximately 700 generic Top Level Domains
8 (“gTLDs”) and 600 branded Top Level Domains (like .Loreal or .Google).

29. Rightside recently launched a new registry platform that offers one of the largest
10 portfolios of domain name extensions on the market, including highly desirable gTLDs such as
11 .REVIEWS, .SOCIAL, and .ATTORNEY.

30. The Company currently has 16 million domain names under management, more
13 than 20,000 distribution partners, an award-winning retail registrar, and the leading domain
14 name auction service through its NameJet joint venture.

31. The vertical integration between its registry and registrar businesses uniquely
16 positions Rightside to service every stage of the domain name lifecycle – from discovery and
17 registration to development and monetization of domain names – while also supporting broad
18 market adoption and usage.

32. Pervasive megatrends are driving substantial growth potential in the Internet's
20 multi-billion dollar domain name industry, and Rightside is well-positioned to benefit from
21 increased momentum in the new gTLD expansion program.

33. The Company's business model and attractive domain name unit economics
23 dramatically improve Rightside's revenue, margin, and free cash flow opportunity. According
24 to its website, these key drivers place Rightside in a solid position for compelling growth and
25 value creation.

34. However, on June 13, 2017, the Board caused the Company to enter into the

1 Merger Agreement, pursuant to which Rightside will be acquired for inadequate consideration.

2 35. The Individual Defendants have all but ensured that another entity will not
 3 emerge with a competing proposal by agreeing to a “no solicitation” provision in the Merger
 4 Agreement that prohibits the Individual Defendants from soliciting alternative proposals and
 5 severely constrains their ability to communicate and negotiate with potential buyers who wish
 6 to submit or have submitted unsolicited alternative proposals.

7 36. Further, the Company must promptly advise Donuts of any proposals or
 8 inquiries received from other parties.

9 37. Moreover, the Merger Agreement contains a highly restrictive “fiduciary out”
 10 provision permitting the Board to withdraw its approval of the Proposed Transaction under
 11 extremely limited circumstances, and grants Donuts a “matching right” with respect to any
 12 “Superior Proposal” made to the Company.

13 38. Further locking up control of the Company in favor of Donuts, the Merger
 14 Agreement provides for a “termination fee” of \$7.7 million, payable by the Company to Donuts
 15 if the Individual Defendants cause the Company to terminate the Merger Agreement.

16 39. By agreeing to all of the deal protection devices, the Individual Defendants have
 17 locked up the Proposed Transaction and have precluded other bidders from making successful
 18 competing offers for the Company.

19 40. The merger consideration to be paid to plaintiff and the Class in the Proposed
 20 Transaction is inadequate.

21 41. Among other things, the intrinsic value of the Company is materially in excess
 22 of the amount offered in the Proposed Transaction.

23 42. Further, the merger consideration fails to adequately compensate the Company’s
 24 stockholders for the significant synergies resulting from the merger.

25 43. Accordingly, the Proposed Transaction will deny Class members their right to
 26 share proportionately and equitably in the true value of the Company’s valuable and profitable
 27 business, and future growth in profits and earnings.

1 ***The Solicitation Statement Omits Material Information, Rendering It False and Misleading***

2 44. Defendants filed the Solicitation Statement with the SEC in connection with the
 3 Proposed Transaction.

4 45. The Solicitation Statement omits material information regarding the Proposed
 5 Transaction, which renders the Solicitation Statement false and misleading.

6 46. First, the Solicitation Statement omits material information regarding the
 7 Company's financial projections and the analyses performed by the Company's financial
 8 advisor, Barclays Capital Inc. ("Barclays"), in support of its so-called fairness opinion.

9 47. With respect to Rightside's financial projections, the Solicitation Statement fails
 10 to disclose: (i) net income; (ii) interest; (iii) income taxes; (iv) depreciation and amortization;
 11 (v) stock-based compensation; (vi) gains, losses, and expenses; and (vii) a reconciliation of all
 12 non-GAAP to GAAP metrics.

13 48. With respect to Barclays' *Discounted Cash Flow Analysis*, the Solicitation
 14 Statement fails to disclose: (i) the projected after-tax unlevered free cash flows for the
 15 Company as used by Barclays in the analysis and the constituent line items used to calculate
 16 unlevered free cash flow; (ii) the terminal value of the Company; and (iii) the inputs and
 17 assumptions underlying the range of after-tax discount rates of 15.0% to 17.0% and the range
 18 of 3.0% to 5.0% of annual perpetuity growth rates for the Company.

19 49. With respect to Barclays' *Selected Comparable Company Analysis*, the
 20 Solicitation Statement fails to disclose the individual multiples and financial metrics for the
 21 companies observed by Barclays in the analysis.

22 50. With respect to Barclays' *Selected Precedent Transactions Analysis*, the
 23 Solicitation Statement fails to disclose the individual multiples and financial metrics for the
 24 transactions observed by Barclays in the analysis.

25 51. With respect to Barclays' *Transaction Premium Analysis*, the Solicitation
 26 Statement fails to disclose: (i) the strategic technology transactions observed by Barclays; and
 27 (ii) the premiums paid in such transactions.

1 52. When a banker's endorsement of the fairness of a transaction is touted to
 2 shareholders, the valuation methods used to arrive at that opinion as well as the key inputs and
 3 range of ultimate values generated by those analyses must also be fairly disclosed. Moreover,
 4 the disclosure of projected financial information is material because it provides stockholders
 5 with a basis to project the future financial performance of a company, and allows stockholders
 6 to better understand the financial analyses performed by the company's financial advisor in
 7 support of its fairness opinion.

8 53. The omission of this material information renders the Solicitation Statement
 9 false and misleading, including, *inter alia*, the following section of the Solicitation Statement:
 10 "The Solicitation or Recommendation."

11 54. Second, the Solicitation Statement omits material information regarding
 12 potential conflicts of interest of the Company's officers and directors.

13 55. Specifically, the Solicitation Statement fails to disclose the timing and nature of
 14 all communications regarding future employment and/or directorship of Rightside's officers
 15 and directors, including who participated in all such communications.

16 56. Communications regarding post-transaction employment during the negotiation
 17 of the underlying transaction must be disclosed to stockholders. This information is necessary
 18 for stockholders to understand potential conflicts of interest of management and the Board, as
 19 that information provides illumination concerning motivations that would prevent fiduciaries
 20 from acting solely in the best interests of the Company's stockholders.

21 57. The omission of this material information renders the Solicitation Statement
 22 false and misleading, including, *inter alia*, the following section of the Solicitation Statement:
 23 "The Solicitation or Recommendation."

24 58. Third, the Registration Statement fails to disclose whether any non-disclosure
 25 agreements executed by Rightside and the prospective bidders contained standstill and/or
 26 "don't ask, don't waive" provisions that are or were preventing those counterparties from
 27 submitting superior offers to acquire the Company.

59. Without this information, stockholders may have the mistaken belief that, if these potentially interested parties wished to come forward with a superior offer, they are or were permitted to do so, when in fact they are or were contractually prohibited from doing so.

60. The omission of this material information renders the Solicitation Statement false and misleading, including, *inter alia*, the following section of the Solicitation Statement: “The Solicitation or Recommendation.”

61. Fourth, the Solicitation Statement omits material information regarding potential conflicts of interest of Barclays.

62. For example, the Solicitation Statement fails to disclose Barclays' holdings in Rightside's, Donuts', and their affiliates' stock.

63. Full disclosure of all potential conflicts is required due to the central role played by investment banks in the evaluation, exploration, selection, and implementation of strategic alternatives.

64. The omission of this material information renders the Solicitation Statement false and misleading, including, *inter alia*, the following section of the Solicitation Statement: “The Solicitation or Recommendation.”

65. The above-referenced omitted information, if disclosed, would significantly alter the total mix of information available to Rightside's stockholders.

COUNT I

(Claim for Violation of Section 14(e) of the 1934 Act Against Defendants)

66. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

67. Section 14(e) of the 1934 Act states, in relevant part, that:

It shall be unlawful for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading . . . in connection with any tender offer or request or invitation for tenders[.]

68. Defendants disseminated the misleading Solicitation Statement, which contained statements that, in violation of Section 14(e) of the 1934 Act, in light of the circumstances under which they were made, omitted to state material facts necessary to make the statements therein not misleading.

69. The Solicitation Statement was prepared, reviewed, and/or disseminated by defendants.

70. The Solicitation Statement misrepresented and/or omitted material facts in connection with the Proposed Transaction as set forth above.

71. By virtue of their positions within the Company and/or roles in the process and the preparation of the Solicitation Statement, defendants were aware of this information and their duty to disclose this information in the Solicitation Statement.

72. The omissions in the Solicitation Statement are material in that a reasonable shareholder will consider them important in deciding whether to tender their shares in connection with the Proposed Transaction. In addition, a reasonable investor will view a full and accurate disclosure as significantly altering the total mix of information made available.

73. Defendants knowingly or with deliberate recklessness omitted the material information identified above in the Solicitation Statement, causing statements therein to be materially incomplete and misleading.

74. By reason of the foregoing, defendants violated Section 14(e) of the 1934 Act.

75. Because of the false and misleading statements in the Solicitation Statement, plaintiff and the Class are threatened with irreparable harm.

76. Plaintiff and the Class have no adequate remedy at law.

COUNT II

(Claim for Violation of 14(d) of the 1934 Act Against Defendants)

77. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

78. Section 14(d)(4) of the 1934 Act states:

1 Any solicitation or recommendation to the holders of such a security to accept or
2 reject a tender offer or request or invitation for tenders shall be made in
3 accordance with such rules and regulations as the Commission may prescribe as
4 necessary or appropriate in the public interest or for the protection of investors.
5

6 79. Rule 14d-9(d) states, in relevant part:
7

8 Any solicitation or recommendation to holders of a class of securities referred to
9 in section 14(d)(1) of the Act with respect to a tender offer for such securities
10 shall include the name of the person making such solicitation or
recommendation and the information required by Items 1 through 8 of Schedule
11 14D-9 (§ 240.14d-101) or a fair and adequate summary thereof[.]
12

13 Item 8 requires that directors must “furnish such additional information, if any, as may be
14 necessary to make the required statements, in light of the circumstances under which they are
15 made, not materially misleading.”
16

17 80. The Solicitation Statement violates Section 14(d)(4) and Rule 14d-9 because it
18 omits the material facts set forth above, which renders the Solicitation Statement false and/or
19 misleading.
20

21 81. Defendants knowingly or with deliberate recklessness omitted the material
22 information set forth above, causing statements therein to be materially incomplete and
23 misleading.
24

25 82. The omissions in the Solicitation Statement are material to plaintiff and the
26 Class, and they will be deprived of their entitlement to make a fully informed decision with
27 respect to the Proposed Transaction if such misrepresentations and omissions are not corrected
prior to the expiration of the tender offer.
28

29 83. Plaintiff and the Class have no adequate remedy at law.
30

COUNT III

(Claim for Violation of Section 20(a) of the 1934 Act Against the Individual Defendants and Donuts)

31 84. Plaintiff repeats and realleges the preceding allegations as if fully set forth
32 herein.
33

34 85. The Individual Defendants and Donuts acted as controlling persons of Rightside
35 within the meaning of Section 20(a) of the 1934 Act as alleged herein. By virtue of their
36

1 positions as officers and/or directors of Rightside and participation in and/or awareness of the
 2 Company's operations and/or intimate knowledge of the false statements contained in the
 3 Solicitation Statement filed with the SEC, they had the power to influence and control and did
 4 influence and control, directly or indirectly, the decision making of the Company, including the
 5 content and dissemination of the various statements that plaintiff contends are false and
 6 misleading.

7 86. Each of the Individual Defendants and Donuts was provided with or had
 8 unlimited access to copies of the Solicitation Statement alleged by plaintiff to be misleading
 9 prior to and/or shortly after these statements were issued and had the ability to prevent the
 10 issuance of the statements or cause them to be corrected.

11 87. In particular, each of the Individual Defendants had direct and supervisory
 12 involvement in the day-to-day operations of the Company, and, therefore, is presumed to have
 13 had the power to control and influence the particular transactions giving rise to the violations as
 14 alleged herein, and exercised the same. The Solicitation Statement contains the unanimous
 15 recommendation of the Individual Defendants to approve the Proposed Transaction. They were
 16 thus directly connected with and involved in the making of the Solicitation Statement.

17 88. Donuts also had direct supervisory control over the composition of the
 18 Solicitation Statement and the information disclosed therein, as well as the information that was
 19 omitted and/or misrepresented in the Solicitation Statement.

20 89. By virtue of the foregoing, the Individual Defendants and Donuts violated
 21 Section 20(a) of the 1934 Act.

22 90. As set forth above, the Individual Defendants and Donuts had the ability to
 23 exercise control over and did control a person or persons who have each violated Section 14(e)
 24 of the 1934 Act and Rule 14a-9, by their acts and omissions as alleged herein. By virtue of
 25 their positions as controlling persons, these defendants are liable pursuant to Section 20(a) of
 26 the 1934 Act.

27 91. As a direct and proximate result of defendants' conduct, plaintiff and the Class
 CLASS ACTION COMPLAINT - 12

1 are threatened with irreparable harm.

2 92. Plaintiff and the Class have no adequate remedy at law.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, plaintiff prays for judgment and relief as follows:

5 A. Enjoining defendants and all persons acting in concert with them from
6 proceeding with, consummating, or closing the Proposed Transaction;

7 B. In the event defendants consummate the Proposed Transaction, rescinding it and
8 setting it aside or awarding rescissory damages;

9 C. Directing the Individual Defendants to file a Solicitation Statement that does not
10 contain any untrue statements of material fact and that states all material facts required in it or
11 necessary to make the statements contained therein not misleading;

12 D. Declaring that defendants violated Sections 14(e), 14(d), and 20(a) of the 1934
13 Act, as well as Rule 14a-9 promulgated thereunder;

14 E. Awarding plaintiff the costs of this action, including reasonable allowance for
15 plaintiff's attorneys' and experts' fees; and

16 F. Granting such other and further relief as this Court may deem just and proper.

17 **JURY DEMAND**

18 Plaintiff hereby demands a trial by jury.

19
20 DATED this 30th day of June, 2017.

21 BRESKIN JOHNSON & TOWNSEND, PLLC

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